

SPROTT FOCUS TRUST INC.

Form N-CSR

March 09, 2016

Table of Contents

**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM N-CSR**

**CERTIFIED SHAREHOLDER REPORT OF REGISTERED**

**MANAGEMENT INVESTMENT COMPANIES**

**Investment Company Act File Number: 811-05379**

**SPROTT FOCUS TRUST, INC.**

**(Exact name of registrant as specified in charter)**

**Royal Bank Plaza, South Tower**

**200 Bay Street, Suite 2700**

**Toronto, Ontario, Canada M5J 2J1**

**(Address of principal executive offices)**

**The Prentice-Hall Corporation System, MA**

**7 St. Paul Street, Suite 820**

**Baltimore, MD 21202**

**(Name and address of agent for service)**

**Registrant s telephone number, including area code: (416) 943-4065**

**Date of fiscal year end: December 31**

**Date of reporting period: January 1, 2015    December 31, 2015**

**Table of Contents**

**Item 1. Reports to Shareholders.**

**Table of Contents**

**December 31, 2015**

Sprott Focus Trust

(formerly, Royce Focus Trust)

**2015 Annual**

**Review and Report to Stockholders**

**[sprottfocustrust.com](http://sprottfocustrust.com)**

---

**Table of Contents**

Table of Contents

<u>Performance</u>	1
<u>Manager’s Discussion of Fund Performance</u>	2
<u>History Since Inception</u>	6
<u>Distribution Reinvestment and Cash Purchase Options</u>	7
<u>Schedule of Investments and Other Financial Statements</u>	8
<u>Directors and Officers</u>	20
<u>Board and Stockholder Approvals of New Investment Advisory and Subadvisory Agreements</u>	21
<u>Notes to Performance and Other Important Information</u>	22
<u>Results of Stockholders Meeting</u>	23

Managed Distribution Policy

The Board of Directors of Sprott Focus Trust, Inc. (the Fund) has authorized a managed distribution policy (MDP). Under the MDP, the Fund pays quarterly distributions at an annual rate of 5% of the average of the prior four quarter-end net asset values, with the fourth quarter being the greater of this annualized rate or the distribution required by IRS regulations. With each distribution, the Fund will issue a notice to its stockholders and an accompanying press release that provides detailed information regarding the amount and composition of the distribution (including whether any portion of the distribution represents a return of capital) and other information required by the Fund’s MDP. You should not draw any conclusions about the Fund’s investment performance from the amount of distributions or from the terms of the Fund’s MDP. The Fund’s Board of Directors may amend or terminate the MDP at any time without prior notice to stockholders.

**Table of Contents**

Performance

**NAV Average Annual Total Returns**

As of December 31, 2015 (%)

<b>Fund</b>	<b>1-YR</b>	<b>3-YR</b>	<b>5-YR</b>	<b>10-YR</b>	<b>15-YR</b>	<b>20-YR</b>	<b>INCE INCEPTION</b>	<b>INCEPTION DATE</b>
Sprott Focus Trust	-11.12	2.20	1.26	4.04	8.17	N/A	8.77	11/1/96 <sup>1</sup>

**INDEX**

Russell 3000 <sup>2</sup>	0.48	14.74	12.18	7.35	5.39	8.27	7.85
---------------------------	------	-------	-------	------	------	------	------

<sup>1</sup> Royce & Associates, LLC served as investment adviser of the Fund from November 1, 1996 to March 6, 2015. After the close of business on March 6, 2015, Sprott Asset Management LP and Sprott Asset Management USA Inc. became the investment adviser and investment sub-adviser, respectively, of the Fund.

<sup>2</sup> Russell Investment Group is the source and owner of the trademarks, service marks, and copyrights related to the Russell Indexes. Russell® is a trademark of Russell Investment Group. The Russell 3000 index measures the performance of the largest 3,000 U.S. companies. The performance of an index does not represent exactly any particular investment, as you cannot invest directly in an index.

**Important Performance and Risk Information**

All performance information reflects past performance, is presented on a total return basis, net of the Fund's investment advisory fee, and reflects the reinvestment of distributions. Past performance is no guarantee of future results. Current performance may be higher or lower than performance quoted. Returns as of the most recent month-end may be obtained at [www.sprottfocustrust.com](http://www.sprottfocustrust.com). The market price of the Fund's shares will fluctuate, so shares may be worth more or less than their original cost when sold.

The Fund is a closed-end registered investment company whose shares of common stock may trade at a discount to their net asset value. Shares of the Fund's common stock are also subject to the market risks of investing in the underlying portfolio securities held by the Fund.

The Fund's shares of common stock trade on the Nasdaq Select Market. Closed-end funds, unlike open-end funds, are not continuously offered. After the initial public offering, shares of closed-end funds are sold on the open market

through a stock exchange. For additional information, contact your financial advisor or call 1.203.656.2430. Investment policies, management fees and other matters of interest to prospective investors may be found in the closed-end fund prospectus used in its initial public offering, as revised by subsequent stockholder reports.

**Table of Contents**

MANAGER'S DISCUSSION

Sprott Focus Trust

**Whitney George**

**DEAR FELLOW SHAREHOLDERS,**

Sprott Focus Trust experienced quite an eventful year during 2015. First, shareholders approved in March the transfer of the Fund's management contract to Sprott Asset Management LP. Second, the Focus Trust Board was refreshed with three highly qualified independent directors—Michael Clark, Barbara Keady and Jim Pierce. Their energies and wide range of financial expertise

have reinvigorated the Focus Trust boardroom. Third, the entrepreneurial Sprott culture has permitted me to refocus my energies exclusively on the investment process at the heart of the Focus Trust charter: long-term wealth creation by means of a disciplined value approach. I would like to express my sincere gratitude to our new partners at Sprott, to our new Focus Trust directors, and most importantly, to my fellow Focus Trust shareholders in their support of these exciting developments.

During 2015, Focus Trust's net asset value declined 11.12%, and the share price declined 13.69% (net of distributions). This compares with a 0.48% increase in the Russell 3000 Index. While we are humbled by our 2015 performance, our confidence in the long-term value of our investment approach remains intact. During 2015, macro headlines of geopolitical developments and central bank policies dominated financial markets. Amid such tumultuous news flow, record sums of investment capital migrated to passive and derivative strategies. In this environment, the relative value of active stock selection endured yet another year of diminished favor in the investment community. Additionally, the seventh consecutive year of Fed zero interest rate policies continued to channel investor preferences toward growth over value. By way of context, many notable value investors posted their most challenging performance statistics in many years. Even value bellwether Berkshire Hathaway endured its worst performance in seven years, declining 12%. Perhaps the good news for value investors is that Berkshire has never experienced two successive declining years since the 1973-1974 lows.

As mentioned in our semi-annual report this past June, volatility has increased across all market sectors. Theoretically, this should produce a preferred environment for active managers focused on individual stock selection. In practice, however, the reverse occurred in 2015. During the second half of the year, market leadership rested on an unusually narrow group of FANG performers (Facebook, Amazon, Netflix and Google). Perhaps investor frustration over such concentrated leadership served to reinforce migration from active to passive strategies. Morningstar estimates (*Wall Street Journal* 1/13/16) that during 2015, investors liquidated \$207.3 billion worth of actively managed mutual funds, while purchasing \$413.8 billion worth of passive funds. Vanguard alone took in \$236 billion of new

investments in 2015, setting a fresh mutual fund company record and eclipsing 2014's prior record of \$215 billion in Vanguard inflows. Historically, rising popularity of passive investment vehicles has generally coincided with the latter stages of bull markets. When tides are rising so rapidly, who needs an active manager? We suspect the passive management trend, accelerating since 2009, may have peaked during 2015. The fact that U.S. equity averages have suffered their worst start to a year in history may give investors pause. Achieving average returns loses its appeal rapidly in bear markets. Once the tide turns back toward active and value strategies, the mean reversion of capital



flows generally lasts for an extended period of years.

### Activity

During 2015, Focus Trust's five best performers were Cirrus Logic, Inc., Value Partners Group, Apple Inc., Cal-Maine Foods and Clarkson PLC. After profitable trimming of these positions during the first six months of the year, we selectively rebuilt these positions amid second-half pullbacks. One deletion from the Focus Trust portfolio during 2015 was AGCO. We felt aggressive share buybacks had over-levered AGCO's balance sheet and we chose to step aside.

Focus Trust holdings which penalized total portfolio return during 2015 included Western Digital, Franklin Resources, Buckle, GameStop Corp. and Unit Corp. All of these companies have been long term holdings of Focus Trust, and have generated significant positive performance in prior years. During 2015, we increased our positions in Franklin, Buckle and GameStop to take advantage of share price declines we viewed as incommensurate with their stable operating performance. In our experience, markets for value securities are rarely efficient – cheap companies can become cheaper, leading to exceptional investment opportunities over the medium and long term. By way of example, we have owned shares of Unit, a diversified energy company, for over a decade. While Unit shares declined over 64% during the past year, total portfolio performance was impacted by less than 1% and, because we view Unit as one of the ultimate survivors of the current energy drawdown, we expect to increase the position significantly as the energy sector recovers in future quarters.

Reflecting the patient time horizon we view as central to a successful value approach, we are somewhat confounded by the 2015 performance of Western Digital. This company is the world leader in memory storage hardware to cloud service providers, a massive growth market. During 2015, however, we believe the company's shares were unduly penalized by the 34% of Western Digital's revenues still emanating from legacy PC markets (down from 54% three years ago). Despite the fact the WDC's aggregate business slowed modestly during 2015, the company engaged in two transformative corporate transactions. First, in September, WDC secured a \$3.78 billion investment from a strategic Chinese investor for 15% of pro forma

**Table of Contents****MANAGER'S DISCUSSION**

shares (at what now represents a 100% premium to the current share price). Second, WDC utilized this improved capital position to negotiate an acquisition of memory market competitor SanDisk (also a Focus Trust holding). Incorporation of SanDisk's solid-state technology into WDC's extensive hard-drive product line should secure WDC's market leadership in the memory space well into the future. Under normal market conditions, either of these corporate announcements would have catalyzed strong market response. Yet, during 2015, Western Digital shares declined by 45% (contributing negative portfolio performance of 2.08%). As frustrating as the recent performance of WDC shares has been, we trust our fundamental analysis and view prevailing valuations for Western Digital as an attractive opportunity for increased Focus Trust commitments during 2016.

**Top Contributions to Performance**Year-to-date through 12/31/15 (%)<sup>1</sup>

Cirrus Logic, Inc.	1.11
Value Partners Group Ltd.	0.67
Myriad Genetics, Inc.	0.56
Cal-Maine Foods, Inc.	0.41
AGCO Corp.	0.32

<sup>1</sup> Includes dividends**Top Detractors from Performance**Year-to-date through 12/31/15 (%)<sup>1</sup>

Western Digital Corp.	-2.08
Franklin Resources, Inc.	-1.47
Buckle, Inc.	-1.04
GameStop Corp. Class A	-1.00
Unit Corp.	-0.96

<sup>1</sup> Net of dividends**Figure 1**

Examining this past year's performance by sector, health care contributed 64 basis points of positive portfolio performance, while industrials contributed 29 basis points and consumer staples (mostly chicken and eggs) added an additional 27 basis points. Industry groups impacting total performance to the negative side were led by consumer discretionary (-2.88%), energy (-2.76%) and materials (-2.75%). Obviously, 2015 was tough sledding in these sectors.

Our 2015 portfolio turnover registered 33.7%, slightly above our five-year average of 27.4%. This was due to increased market volatility in the second half of the year. We still believe limited turnover is an important component of a long-term investment strategy which helps to minimize market friction costs.

### Positioning

At year-end 2015, Focus Trust remained relatively fully invested (4.15% cash position). We view our limited cash position more as a reflection of exceptionally attractive investment opportunities than as a general market call. Our portfolio has become slightly more concentrated during the past twelve months, with 44 positions versus 50 at the start of the year.

### Top 10 Positions

(% of Net Assets)

Sanderson Farms Inc.	4.8
MKS Instruments Inc.	4.4
Cal-Maine Foods Inc.	4.3
Cirrus Logic Inc.	4.3
Apple Computer Inc.	4.2
Franklin Resources Inc.	4.2
Western Digital Corp.	4.1
Kennedy-Wilson Holdings Inc.	4.0
Gamestop Corp.	3.5
Industrias Bachoco S.A.	2.9

### Portfolio Sector Breakdown

(% of Net Assets)

Financial Services	18.0
Information Technology	17.5
Materials	15.8
Consumer Staples	14.8
Consumer Discretionary	13.9
Energy	9.2
Industrials	4.6
Cash and Cash Equivalents	4.2
Health Care	3.6

Figure 2

Focus Trust positions are always capped at 5% of portfolio asset value. We provide in Figure 2, above, the Fund's top ten positions, as well as a breakdown of the portfolio's sector allocations. Our largest sector weightings are technology (17.5%), financials (18.0%), and materials (15.8%). Two sectors experiencing elevated market turbulence in recent months, energy and precious metals (subset of materials), represent 9.2% and 9.2% of portfolio assets, respectively. Our most unique industry sub-sector can best be described as affordable protein (within consumer staples), and, at a 12.6% portfolio weighting, includes two chicken processors and the nation's largest whole egg producer.

### Portfolio Diagnostics

Fund Net Assets	\$162 million
Number of Holdings	44
2015 Annual Turnover Rate	34%
Net Asset Value	\$6.87
Market Price	\$5.80
Average Market Capitalization <sup>1</sup>	\$ 4,263 million
Weighted Average P/E Ratio <sup>2,3</sup>	13.3x
Weighted Average P/B Ratio <sup>2</sup>	1.7x
Weighted Average Yield	2.34%
Weighted Average ROIC	21.81%
Weighted Average Leverage Ratio	1.85x
Holdings <sup>3</sup> 75% of Total Investments	26
U.S. Investments (% of Net Assets)	71.6
Non-U.S. Investments (% of Net Assets)	24.3

**Figure 3**

<sup>1</sup> **Geometric Average.** This weighted calculation uses each portfolio holding's market cap in a way designed to not skew the effect of very large or small holdings; instead, it aims to better identify the portfolio's center, which Sprott believes offers a more accurate measure of average market cap than a simple mean or median.

---

**Table of Contents****MANAGER'S DISCUSSION**

<sup>2</sup> **Harmonic Average.** This weighted calculation evaluates a portfolio as if it were a single stock and measures it overall. It compares the total market value of the portfolio to the portfolio's share in the earnings or book value, as the case may be, of its underlying stocks.

<sup>3</sup> The Fund's P/E ratio calculation excludes companies with zero or negative earnings.

More than half of Focus Trust portfolio companies are currently executing share-buyback programs. Additionally, shares of many Focus Trust portfolio companies register high short interest ratios, promising the potential for market leading returns as company fundamentals play out to our expectations. Importantly, the cap-rate calculations underpinning my valuation work over the past twenty years suggest the average Focus Trust holding now offers as attractive a risk/reward proposition as I can ever recall. We provide in Figure 3, above, a table of relevant financial characteristics of Focus Trust weighted average positions.

**Outlook**

During the first week in January, broad equity averages posted historically poor performances. Consensus debate focuses on whether a new bear market has begun. From our perspective, various industry segments have already been experiencing rolling bear corrections during the past two years. For gold and precious-metal miners, the bear market began in 2011, for energy in 2014 and for small-cap stocks this past May. Only very recently have the largest S&P 500 generals begun to retreat with the troops. Important investment considerations for 2016 include how deep any U.S. market correction will extend, how impaired China's economy really is, and what the ultimate ramifications of collapsing energy prices will turn out to be. Our expectations for 2016 are that the lion's share of valuation adjustments for each of these three factors has already transpired. With earning season beginning in earnest in coming weeks, we look forward to the comparative rewards of some of our portfolio companies' strong fundamentals.

We expect the free fall in energy prices to end shortly as it appears the market has finally reached capitulation mode. Once prices stabilize, the rationalization of projects and investments can begin in earnest. There will be some great opportunities and big disappointments but at least the recent lifting of the U.S. oil-export ban will finally allow low-cost domestic producers to access global energy markets. As legacy price hedges expire and production curves of ephemeral shale deposits decline, we anticipate significant investment opportunities among well-run domestic energy producers. Furthermore, recent geopolitical headlines suggest political-risk premiums are likely to return to energy markets. We have learned to invest in post-bubble busts over the past two decades. Buying technology in 2001 and real estate in 2009 worked extremely well. We view energy and industrial commodities in 2016 as offering similar risk-reward opportunities.

A legitimate investment concern remains whether equity markets can progress in a post-QE environment. It would be nice to return to an environment in which markets were not dependent on monetary

intervention. Our early assessment is that the Fed's first rate increase may already be catalyzing a global deflationary chain reaction. The Fed was hoping to begin normalization of rates during the course of this year with four 25 basis point increases. Fixed income markets have already downgraded tightening prospects to just one incremental increase during all of 2016. Given the heightened role played by politics in 2016, we are worried about the potential for QE-4-Ever.

**The Discount**

Shares of Focus Trust have in recent months traded at a discount to their Net Asset Value, ranging from 16% to 18%. Closed-end funds traditionally contend with the nettlesome issue of discounts in secondary trading of issued shares. As portfolio manager of Focus Trust, I can rationalize a reasonable fluctuation between discount and premium valuations to fund NAV, in return for the investment continuity afforded by a stable capital base. As the largest shareholder of Focus Trust, however, I am keenly aware of the arbitrage potential afforded between Focus Trust portfolio positions and quoted share price. Along these lines, the Board of Directors of Focus Trust has begun a process of consideration of various alternatives to address the Focus Trust discount to NAV. While there can be no assurance any substantive decisions or actions will be undertaken by our Board to address the prevailing discount, I do promise an update on these matters throughout the course of 2016. For the time being, we shall stick to our discipline, strive for improved performance and seek to share our approach with like-minded investors.

### **Sprott**

I am both delighted and energized by my recent move to Sprott. I remain deeply committed to the value investment discipline which has served me well for nearly three decades, through good times and bad. Because I view alignment of interests as a critical component of the manager-client relationship, I intend always to maintain a leading investment in any public vehicle I manage. Along these lines, my personal ownership of Focus Trust shares represents 23.1% of total shares outstanding. I have a sincere interest in maintaining contact and dialogue with all Focus Trust shareholders. I encourage any Focus Trust shareholder with questions or comments to feel free to contact me at 203-656-2430 or [wgeorge@sprottusa.com](mailto:wgeorge@sprottusa.com).

I look forward to hearing directly from any shareholders new or old. Many thanks for your interest.

Sincerely,

Whitney George

**Table of Contents**

PERFORMANCE AND PORTFOLIO REVIEW

**SYMBOLS MARKET PRICE FUND NAV  
XFUNX**

**Performance<sup>1</sup>**

Average Annual Total Return (%) Through 12/31/15

	<b>JUL-DEC 2015*</b>	<b>1-YR</b>	<b>3-YR</b>	<b>5-YR</b>	<b>10-YR</b>	<b>15-YR</b>	<b>SINCE INCEPTION (11/1/96)</b>
<b>FUND (NAV)</b>	-13.36	-11.12	2.20	1.26	4.04	8.17	8.77

\* Not Annualized

**Relative Returns: Monthly Rolling Average Annual Return Periods<sup>1</sup>**

15 Years through 12/31/15

On a monthly rolling basis, the Fund outperformed the Russell 3000 in 74% of all 10-year periods; 64% of all 5-year periods; 63% of all 3-year periods; and 62% of all 1-year periods.

\* Average of monthly rolling average annual total returns over the specified periods.

**Market Price Performance History Since Inception (11/1/96)<sup>1</sup>**

Cumulative Performance of Investment<sup>2</sup>

<b>Description</b>	<b>1 Month</b>	<b>QTD</b>	<b>YTD</b>	<b>1 Year</b>	<b>2 Year</b>	<b>3 Year</b>	<b>5 Year</b>	<b>10 Year</b>	<b>SINCE INCEPTION (11/1/96)</b>
<b>Sprott Focus Trust (MKT TR)</b>	(2.34)	0.64	(14.74)	(14.74)	(13.19)	5.89	4.80	30.65	230.35
	(4.76)	(1.86)	(20.22)	(20.22)	(23.88)	(12.12)	(23.38)	(39.14)	1.98
									417.03
									32.57

Sprott Focus  
Trust  
(MKT Price)

- <sup>1</sup> Royce & Associates, LLC served as investment adviser of the Fund from November 1, 1996 to March 6, 2015. After the close of business on March 6, 2015, Sprott Asset Management LP and Sprott Asset Management USA Inc. became the investment adviser and investment sub-adviser, respectively, of the Fund.
- <sup>2</sup> Reflects the cumulative performance experience of a continuous common stockholder who reinvested all distributions and fully participated in the primary subscription of the Fund's 2005 rights offering.
- <sup>3</sup> Reflects the actual month-end market price movement of one share as it has traded on Nasdaq.

### Calendar Year Total Returns (%)

YEAR	FUND (NAV)
2015	-11.1
2014	0.3
2013	19.7
2012	11.4
2011	-10.5
2010	21.8
2009	54.0
2008	-42.7
2007	12.2
2006	15.8
2005	13.7
2004	29.3
2003	54.3
2002	-12.5
2001	10.0
2000	20.9
1999	8.7

### Important Performance and Risk Information

All performance information reflects past performance, is presented on a total return basis, and reflects the reinvestment of distributions. Past performance is no guarantee of future results. Current performance may be higher or lower than performance quoted. Returns as of the most recent month-end may be obtained at [www.SprottFocusTrust.com](http://www.SprottFocusTrust.com). The market price of the Fund's shares will fluctuate, so shares may be worth more or less than their original cost when sold. The Fund normally invests primarily in small/mid cap companies, which may involve considerably more risk than investing in a larger-cap companies. The Fund also generally invests a significant portion of its assets in a limited number of stocks, which may involve considerably more risk than a broadly



diversified portfolio because a decline in the value of any one of these stocks would cause the Fund's overall value to decline to a greater degree. Regarding the Top Contributors and Top Detractors tables shown on page 3, the sum of all contributors to, and all detractors from, performance for all securities in the portfolio would approximate the Fund's performance for 2015.

**Table of Contents**

## History Since Inception

The following table details the share accumulations by an initial investor in the Fund who reinvested all distributions and participated fully in primary subscriptions for each of the rights offerings. Full participation in distribution reinvestments and rights offerings can maximize the returns available to a long-term investor. This table should be read in conjunction with the Performance and Portfolio Review of the Fund.

HISTORY	AMOUNT REINVESTED	RENTS	PRIOR SHARES	SHARES	NAV VALUE <sup>2</sup>	MARKET VALUE <sup>2</sup>
10/31/96	Initial Purchase	\$ 4,375	\$ 4,375	1,000	\$ 5,280	\$ 4,375
12/31/96					5,520	4,594
12/5/97	Distribution					
	\$0.53		5,250	101	6,650	5,574
12/31/98					6,199	<b>Authorized Capital Stock of Brooks</b>

Under our restated certificate of incorporation our authorized capital stock consists of 125,000,000 shares of common stock, \$0.01 par value per share, and 1,000,000 shares of preferred stock, \$0.01 par value per share, of which 126,500 shares have been designated Series A Junior Participating Preferred Stock. We designated the Series A Junior Participating Preferred Stock in connection with a shareholder rights plan that has expired. Accordingly, we have no present intention to issue any shares of such stock.

**Common Stock**

*Voting.* The holders of common stock are entitled to one vote for each share held of record on all matters submitted to a vote of our stockholders. Our common stock does not have cumulative voting rights.

*Dividends.* If our board of directors declares a dividend, holders of our common stock will receive payments from our funds that are legally available to pay dividends.

---

**Table of Contents**

*Liquidation and Dissolution.* If we are liquidated, dissolved or our affairs are wound up, the holders of our common stock will be entitled to share ratably in all the assets that remain after payment of our liabilities and the liquidation preference of any then outstanding preferred stock.

*Other Rights and Restrictions.* Holders of our common stock have no preemptive or other subscription or conversion rights. There are no redemption or sinking fund provisions applicable to our common stock. The common stock will, when issued, be fully paid and nonassessable.

*Listing.* Our common stock is listed on The NASDAQ Global Select Market under the symbol BRKS.

*Transfer Agent and Registrar.* The transfer agent and registrar for our common stock is Computershare, Inc.

**Preferred Stock**

Under our restated certificate of incorporation, we have authority, subject to any limitations prescribed by law and without further stockholder approval, to issue from time to time up to 1,000,000 shares of preferred stock, \$0.01 par value per share, in one or more classes or series. Our board of directors, without further approval of the stockholders, is authorized to fix the dividend rights and terms, conversion rights, voting rights, redemption rights and terms, liquidation preferences, and any other rights, preferences, privileges and restrictions applicable to each class or series of the preferred stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes could, among other things, adversely affect the voting power or rights of the holders of our common stock and, under certain circumstances, make it more difficult for a third party to gain control of us, discourage bids for our common stock at a premium or otherwise adversely affect the market price of the common stock.

The preferred stock that we may offer pursuant to this prospectus has the terms

described below unless otherwise provided in the prospectus supplement relating to a particular series of the preferred stock. You should read the prospectus supplement relating to the particular series of the preferred stock being offered for specific terms, including:

the title of the series and stated value;

the number of shares of the series of preferred stock offered, the liquidation preference per share, if applicable, and the offering price;

the applicable dividend rate(s) or amount(s), period(s) and payment date(s) or method(s) of calculation thereof;

the date from which dividends on the preferred stock will accumulate, if applicable;

any procedures for auction and remarketing;

any provisions for a sinking fund;

---

**Table of Contents**

any applicable provision for redemption and the price or prices, terms and conditions on which preferred stock may be redeemed;

any securities exchange listing;

any voting rights and powers;

whether interests in the preferred stock will be represented by depository shares;

the terms and conditions, if applicable, of conversion into shares of our common stock, including the conversion price or rate or manner of calculation thereof;

a discussion of any material U.S. federal income tax considerations;

the relative ranking and preference as to dividend rights and rights upon our liquidation, dissolution or the winding up of our affairs;

any limitations on issuance of any series of preferred stock ranking senior to or on parity with such series of preferred stock as to dividend rights and rights upon our liquidation, dissolution or the winding up of our affairs; and

any other specific terms, preferences, rights, limitations or restrictions of such series of preferred stock.

The preferred stock will, when issued, be fully paid and nonassessable. Unless otherwise specified in the prospectus supplement, each series of the preferred stock will rank equally as to dividends and liquidation rights in all respects with each other series of preferred stock. The rights of holders of shares of each series of preferred stock will be subordinate to

those of our general creditors.

The transfer agent and registrar for the preferred stock will be set forth in the applicable prospectus supplement.

**Certain Effects of Authorized but Unissued Stock**

We have shares of common stock and preferred stock available for future issuance without stockholder approval. We may issue these additional shares for a variety of corporate purposes, including future public offerings to raise additional capital, facilitating corporate acquisitions or for paying a dividend on our capital stock. The existence of unissued and unreserved common stock and preferred stock may enable our board of directors to issue shares to persons friendly to current management or to issue preferred stock with terms that could render more difficult or discourage a third-party attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise, thereby protecting the continuity of our management. In addition, if we issue preferred stock, the issuance could adversely affect the voting power of holders of common stock and the likelihood that such holders will receive dividend payments and payments upon liquidation.

---

**Table of Contents**

**Delaware Law and Certificate of Incorporation and By-laws Provisions**

*Stockholder Action; Special Meeting of Stockholders.* Our restated certificate of incorporation and amended and restated bylaws also provide that:

stockholder action may be taken only at a duly called and convened annual or special meeting of stockholders;

stockholder action may not be taken by written consent in lieu of a meeting; and

special meetings of stockholders may be called only by our president or by our board of directors.

These provisions could delay, until the next stockholders meeting, actions which are favored by the holders of a majority of our outstanding voting securities. These provisions may also discourage another person or entity from making a tender offer for our common stock, because a person or entity, even if it acquired a majority of our outstanding voting securities, would be able to take action as a stockholder only at a duly called stockholders meeting, and not by written consent.

*Supermajority Votes Required.* The Delaware General Corporation Law provides that the vote of a majority of the shares entitled to vote on any matter is required to amend a corporation's certificate of incorporation or by-laws, unless a corporation's certificate of incorporation or by-laws, as the case may be, requires a greater percentage. Our restated certificate of incorporation provides that any vote required by stockholders pursuant to the Delaware General Corporation Law, other than the election of directors, requires the vote of the holders of a majority of each class of stock outstanding and entitled to vote thereon, if recommended by a majority of

the continuing directors (as defined in our restated certificate of incorporation) or, if not so recommended, eighty percent of each class of stock outstanding and entitled to vote thereon.

*Business Combinations.* Section 203 of the General Corporation Law of the State of Delaware is applicable to us. Section 203 restricts some types of transactions and business combinations between a corporation and a 15% stockholder. A 15% stockholder is generally considered by Section 203 to be a person owning 15% or more of the corporation's outstanding voting stock. Section 203 refers to a 15% stockholder as an interested stockholder. Section 203 restricts these transactions for a period of three years from the date the stockholder acquires 15% or more of our outstanding voting stock. With some exceptions, unless the transaction is approved by our board of directors and the holders of at least two-thirds of our outstanding voting stock, Section 203 prohibits significant business transactions such as:

a merger with, disposition of significant assets to or receipt of disproportionate financial benefits by the interested stockholder, and

any other transaction that would increase the interested stockholder's proportionate ownership of any class or series of our capital stock.



---

**Table of Contents**

The shares held by the interested stockholder are not counted as outstanding when calculating the two-thirds of the outstanding voting stock needed for approval.

The prohibition against these transactions does not apply if:

prior to the time that any stockholder became an interested stockholder, our board of directors approved either the business combination or the transaction in which such stockholder acquired 15% or more of our outstanding voting stock, or

the interested stockholder owns at least 85% of our outstanding voting stock as a result of a transaction in which such stockholder acquired 15% or more of our outstanding voting stock. Shares held by persons who are both directors and officers or by some types of employee stock plans are not counted as outstanding when making this calculation.

*Indemnification.* Our restated certificate of incorporation provides that no director of our company shall be personally liable for any monetary damages for any breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the company or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. Our restated certificate of incorporation further provides for the indemnification of our directors and officers to the fullest extent permitted by Section 145 of the Delaware General Corporation Law.

Our amended and restated bylaws provide that we may indemnify, and may advance expenses, to each covered person who is a party to, or was or is threatened to be made a party to, or is otherwise involved in any proceeding, as provided in our amended and restated bylaws and to the

fullest extent permitted by applicable law.

## **DESCRIPTION OF DEPOSITARY SHARES**

### **General**

We may, at our option, elect to offer fractional shares of preferred stock, which we call depositary shares, rather than full shares of preferred stock. If we do, we will issue to the public receipts, called depositary receipts, for depositary shares, each of which will represent a fraction, to be described in the applicable prospectus supplement, of a share of a particular series of preferred stock. Unless otherwise provided in the prospectus supplement, each owner of a depositary share will be entitled, in proportion to the applicable fractional interest in a share of preferred stock represented by the depositary share, to all the rights and preferences of the preferred stock represented by the depositary share. Those rights include dividend, voting, redemption, conversion and liquidation rights.

The shares of preferred stock underlying the depositary shares will be deposited with a bank or trust company selected by us to act as depositary under a deposit agreement between us, the depositary and the holders of the depositary receipts. The depositary will be the transfer agent, registrar and dividend disbursing agent for the depositary shares.

---

## **Table of Contents**

The depositary shares will be evidenced by depositary receipts issued pursuant to the depositary agreement. Holders of depositary receipts agree to be bound by the deposit agreement, which requires holders to take certain actions such as filing proof of residence and paying certain charges.

The summary of terms of the depositary shares contained in this prospectus is not complete. You should refer to the form of the deposit agreement, our restated certificate of incorporation and the certificate of designation for the applicable series of preferred stock that are, or will be, filed with the SEC.

### **Dividends and Other Distributions**

The depositary will distribute all cash dividends or other cash distributions, if any, received in respect of the preferred stock underlying the depositary shares to the record holders of depositary shares in proportion to the numbers of depositary shares owned by those holders on the relevant record date. The relevant record date for depositary shares will be the same date as the record date for the underlying preferred stock.

If there is a distribution other than in cash, the depositary will distribute property (including securities) received by it to the record holders of depositary shares, unless the depositary determines that it is not feasible to make the distribution. If this occurs, the depositary may, with our approval, adopt another method for the distribution, including selling the property and distributing the net proceeds from the sale to the holders.

### **Liquidation Preference**

If a series of preferred stock underlying the depositary shares has a liquidation preference, in the event of the voluntary or involuntary liquidation, dissolution or winding up of us, holders of depositary shares will be entitled to receive the fraction of the liquidation preference accorded each share of the applicable series of preferred stock, as set forth in the applicable prospectus supplement.

**Withdrawal of Stock**

Unless the related depositary shares have been previously called for redemption, upon surrender of the depositary receipts at the office of the depositary, the holder of the depositary shares will be entitled to delivery, at the office of the depositary to or upon his or her order, of the number of whole shares of the preferred stock and any money or other property represented by the depositary shares. If the depositary receipts delivered by the holder evidence a number of depositary shares in excess of the number of depositary shares representing the number of whole shares of preferred stock to be withdrawn, the depositary will deliver to the holder at the same time a new depositary receipt evidencing the excess number of depositary shares. In no event will the depositary deliver fractional shares of preferred stock upon surrender of depositary receipts. Holders of preferred stock thus withdrawn may not thereafter deposit those shares under the deposit agreement or receive depositary receipts evidencing depositary shares therefor.

---

**Table of Contents**

**Redemption of Depositary Shares**

Whenever we redeem shares of preferred stock held by the depositary, the depositary will redeem as of the same redemption date the number of depositary shares representing shares of the preferred stock so redeemed, so long as we have paid in full to the depositary the redemption price of the preferred stock to be redeemed plus an amount equal to any accumulated and unpaid dividends on the preferred stock to the date fixed for redemption. The redemption price per depositary share will be equal to the redemption price and any other amounts per share payable on the preferred stock multiplied by the fraction of a share of preferred stock represented by one depositary share. If less than all the depositary shares are to be redeemed, the depositary shares to be redeemed will be selected by lot or pro rata or by any other equitable method as may be determined by the depositary.

After the date fixed for redemption, depositary shares called for redemption will no longer be deemed to be outstanding and all rights of the holders of depositary shares will cease, except the right to receive the monies payable upon redemption and any money or other property to which the holders of the depositary shares were entitled upon redemption upon surrender to the depositary of the depositary receipts evidencing the depositary shares.

**Voting the Preferred Stock**

Upon receipt of notice of any meeting at which the holders of the preferred stock are entitled to vote, the depositary will mail the information contained in the notice of meeting to the record holders of the depositary receipts relating to that preferred stock. The record date for the depositary receipts relating to the preferred stock will be the same date as the record date for the preferred stock. Each record holder of the depositary shares on the record date will be entitled to instruct the depositary as to the exercise of the voting rights pertaining to the number of shares of preferred stock represented by that holder's depositary shares. The depositary will endeavor,

insofar as practicable, to vote the number of shares of preferred stock represented by the depositary shares in accordance with those instructions, and we will agree to take all action that may be deemed necessary by the depositary in order to enable the depositary to do so. The depositary will not vote any shares of preferred stock except to the extent it receives specific instructions from the holders of depositary shares representing that number of shares of preferred stock.

#### **Charges of Depositary**

We will pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. We will pay charges of the depositary in connection with the initial deposit of the preferred stock and any redemption of the preferred stock. Holders of depositary receipts will pay transfer, income and other taxes and governmental charges and such other charges (including those in connection with receipt and distribution of dividends, the sale or exercise of rights, the withdrawal of the preferred stock and the transferring, splitting or grouping of depositary receipts) as are expressly provided in the deposit agreement to be for their accounts. If these charges have not been paid by the holders of depositary receipts, the depositary may refuse to transfer depositary shares, withhold dividends and distributions and sell the depositary shares evidenced by the depositary receipt.

---

**Table of Contents**

**Amendment and Termination of the Deposit Agreement**

The form of depositary receipt evidencing the depositary shares and any provision of the deposit agreement may be amended by agreement between us and the depositary. However, any amendment that materially and adversely alters the rights of the holders of depositary shares, other than fee changes, will not be effective unless the amendment has been approved by the holders of a majority of the outstanding depositary shares. The deposit agreement may be terminated by the depositary or us only if:

all outstanding depositary shares have been redeemed; or

there has been a final distribution of the preferred stock in connection with our dissolution and such distribution has been made to all the holders of depositary shares.

**Resignation and Removal of Depositary**

The depositary may resign at any time by delivering to us notice of its election to do so, and we may remove the depositary at any time. Any resignation or removal of the depositary will take effect upon our appointment of a successor depositary and its acceptance of such appointment. The successor depositary must be appointed within 60 days after delivery of the notice of resignation or removal and must be a bank or trust company having its principal office in the United States and having the requisite combined capital and surplus as set forth in the applicable agreement.

**Notices**

The depositary will forward to holders of depositary receipts all notices, reports and other communications, including proxy solicitation materials received from us, that are delivered to the depositary and that we are required to furnish to the holders of the preferred stock. In addition, the depositary will make available for inspection by holders of depositary

receipts at the principal office of the depositary, and at such other places as it may from time to time deem advisable, any reports and communications we deliver to the depositary as the holder of preferred stock.

**Limitation of Liability**

Neither we nor the depositary will be liable if either is prevented or delayed by law or any circumstance beyond its control in performing its obligations. Our obligations and those of the depositary will be limited to performance in good faith of our and their duties thereunder. We and the depositary will not be obligated to prosecute or defend any legal proceeding in respect of any depositary shares or preferred stock unless satisfactory indemnity is furnished. We and the depositary may rely upon written advice of counsel or accountants, on information provided by persons presenting preferred stock for deposit, holders of depositary receipts or other persons believed to be competent to give such information and on documents believed to be genuine and to have been signed or presented by the proper party or parties.



---

**Table of Contents**

**DESCRIPTION OF PURCHASE  
CONTRACTS AND PURCHASE  
UNITS**

We may issue purchase contracts, including contracts obligating holders to purchase from or sell to us, and obligating us to sell to or purchase from the holders, a specified number of shares of our common stock, preferred stock or depositary shares at a future date or dates, which we refer to in this prospectus as purchase contracts. The price per share of common stock, preferred stock or depositary shares and the number of shares of each may be fixed at the time the purchase contracts are issued or may be determined by reference to a specific formula set forth in the purchase contracts. The purchase contracts may be issued separately or as part of units, often known as purchase units, consisting of one or more purchase contracts and beneficial interests in:

debt securities,

debt obligations of third parties,  
including U.S. treasury securities, or

any other securities described in the applicable prospectus supplement or any combination of the foregoing, securing the holders' obligations to purchase the common stock, preferred stock or depositary shares under the purchase contracts.

The purchase contracts may require us to make periodic payments to the holders of the purchase units or vice versa, and these payments may be unsecured or prefunded on some basis. The purchase contracts may require holders to secure their obligations under those contracts in a specified manner, including pledging their interest in another purchase contract.

The applicable prospectus supplement will describe the terms of the purchase contracts and purchase units, including, if applicable, collateral or depositary arrangements.

**DESCRIPTION OF WARRANTS**

We may issue warrants to purchase debt securities, preferred stock or common stock. We may offer warrants separately or together with one or more additional warrants, debt securities, preferred stock or common stock, or any combination of those securities in the form of purchase units, as described in the applicable prospectus supplement. If we issue warrants as part of a unit, the accompanying prospectus supplement will specify whether those warrants may be separated from the other securities in the unit prior to the warrants' expiration date. Below is a description of certain general terms and provisions of the warrants that we may offer. Further terms of the warrants will be described in the prospectus supplement.

The applicable prospectus supplement will describe the following terms of any warrants in respect of which this prospectus is being delivered:

the specific designation and aggregate number of, and the price at which we will issue, the warrants;

the currency or currency units in which the offering price, if any, and the exercise price are payable;

---

**Table of Contents**

the date on which the right to exercise the warrants will begin and the date on which that right will expire or, if you may not continuously exercise the warrants throughout that period, the specific date or dates on which you may exercise the warrants;

whether the warrants will be issued in fully registered form or bearer form, in definitive or global form or in any combination of these forms;

any applicable material U.S. federal income tax consequences;

the identity of the warrant agent for the warrants and of any execution or paying agents, transfer agents, registrars or other agents;

the proposed listing, if any, of the warrants or any securities purchasable upon exercise of the warrants on any securities exchange;

the designation and terms of the equity securities purchasable upon exercise of the warrants;

the designation, aggregate principal amount, currency and terms of the debt securities that may be purchased upon exercise of the warrants;

if applicable, the designation and terms of the debt securities, preferred stock or common stock with which the warrants are issued and, the number of warrants issued with each security;

if applicable, the date from and after which the warrants and the related debt securities, preferred stock or common stock will be separately transferable;

the number of shares of preferred stock, the number of depositary shares, the number of shares of common stock purchasable upon exercise of a warrant and the price at which those shares may be purchased;

if applicable, the minimum or maximum amount of the warrants that may be exercised at any one time;

information with respect to book-entry procedures, if any;

the antidilution provisions of the warrants, if any;

any redemption or call provisions; and

any additional terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants.

---

**Table of Contents**

**FORMS OF SECURITIES**

Each debt security, depositary share, purchase contract, purchase unit and warrant will be represented either by a certificate issued in definitive form to a particular investor or by one or more global securities representing the entire issuance of securities. Certificated securities in definitive form and global securities will be issued in registered form. Definitive securities name you or your nominee as the owner of the security, and in order to transfer or exchange these securities or to receive payments other than interest or other interim payments, you or your nominee must physically deliver the securities to the trustee, registrar, paying agent or other agent, as applicable. Global securities name a depositary or its nominee as the owner of the debt securities or warrants represented by these global securities. The depositary maintains a computerized system that will reflect each investor's beneficial ownership of the securities through an account maintained by the investor with its broker/dealer, bank, trust company or other representative, as we explain more fully below.

**Global Securities**

We may issue the registered debt securities, depositary shares, purchase contracts, purchase units and warrants in the form of one or more fully registered global securities that will be deposited with a depositary or its nominee identified in the applicable prospectus supplement and registered in the name of that depositary or nominee. In those cases, one or more registered global securities will be issued in a denomination or aggregate denominations equal to the portion of the aggregate principal or face amount of the securities to be represented by registered global securities. Unless and until it is exchanged in whole for securities in definitive registered form, a registered global security may not be transferred except as a whole by and among the depositary for the registered global security, the nominees of the depositary or any successors of the depositary or those nominees.

If not described below, any specific terms of the depositary arrangement with respect to any securities to be represented by a registered global security will be described in the prospectus supplement relating to those securities. We anticipate that the following provisions will apply to all depositary arrangements.

Ownership of beneficial interests in a registered global security will be limited to persons, called participants, that have accounts with the depositary or persons that may hold interests through participants. Upon the issuance of a registered global security, the depositary will credit, on its book-entry registration and transfer system, the participants accounts with the respective principal or face amounts of the securities beneficially owned by the participants. Any dealers, underwriters or agents participating in the distribution of the securities will designate the accounts to be credited. Ownership of beneficial interests in a registered global security will be shown on, and the transfer of ownership interests will be effected only through, records maintained by the depositary, with respect to interests of participants, and on the records of participants, with respect to interests of persons holding through participants. The laws of some states may require that some purchasers of securities take physical delivery of these securities in definitive form. These laws may impair your ability to own, transfer or pledge beneficial interests in registered global securities.

---

**Table of Contents**

So long as the depositary, or its nominee, is the registered owner of a registered global security, that depositary or its nominee, as the case may be, will be considered the sole owner or holder of the securities represented by the registered global security for all purposes under the applicable indenture or warrant agreement. Except as described below, owners of beneficial interests in a registered global security will not be entitled to have the securities represented by the registered global security registered in their names, will not receive or be entitled to receive physical delivery of the securities in definitive form and will not be considered the owners or holders of the securities under the applicable indenture or warrant agreement. Accordingly, each person owning a beneficial interest in a registered global security must rely on the procedures of the depositary for that registered global security and, if that person is not a participant, on the procedures of the participant through which the person owns its interest, to exercise any rights of a holder under the applicable indenture, depositary share agreement, purchase contract, unit agreement or warrant agreement. We understand that under existing industry practices, if we request any action of holders or if an owner of a beneficial interest in a registered global security desires to give or take any action that a holder is entitled to give or take under the applicable indenture, depositary share agreement, purchase contract, unit agreement or warrant agreement, the depositary for the registered global security would authorize the participants holding the relevant beneficial interests to give or take that action, and the participants would authorize beneficial owners owning through them to give or take that action or would otherwise act upon the instructions of beneficial owners holding through them.

Principal or premium, if any, and interest payments on debt securities, and any payments to holders with respect to purchase contracts, purchase units, warrants represented by a registered global security registered in the name of a depositary or its nominee will be made to the depositary or its nominee, as the case

may be, as the registered owner of the registered global security. None of Brooks, any trustee, any warrant agent, any unit agent or any other agent of Brooks, agent of the trustee or agent of such unit agent, warrant agent or other agent will have any responsibility or liability for any aspect of the records relating to payments made on account of beneficial ownership interests in the registered global security or for maintaining, supervising or reviewing any records relating to those beneficial ownership interests.

We expect that the depositary for any of the securities represented by a registered global security, upon receipt of any payment of principal, premium, interest or other distribution of underlying securities or other property to holders of that registered global security, will immediately credit participants' accounts in amounts proportionate to their respective beneficial interests in that registered global security as shown on the records of the depositary. We also expect that payments by participants to owners of beneficial interests in a registered global security held through participants will be governed by standing customer instructions and customary practices, as is now the case with the securities held for the accounts of customers in bearer form or registered in street name, and will be the responsibility of those participants.

If the depositary for any of these securities represented by a registered global security is at any time unwilling or unable to continue as depositary or ceases to be a clearing agency registered under the Exchange Act, and a successor depositary registered as a clearing agency under the Exchange Act is not appointed by us within 90 days, we will issue securities in definitive form in exchange for the registered global security that had been held by the depositary. Any securities issued in definitive form in exchange for a registered global security



---

**Table of Contents**

will be registered in the name or names that the depositary gives to the relevant warrant agent or other relevant agent of ours or theirs. It is expected that the depositary's instructions will be based on directions received by the depositary from participants with respect to ownership of beneficial interests in the registered global security that had been held by the depositary.

**PLAN OF DISTRIBUTION**

We may sell securities:

through underwriters;

through dealers;

through agents;

directly to purchasers; or

through a combination of any of these methods of sale.

In addition, we may issue the securities as a dividend or distribution or in a subscription rights offering to our existing security holders.

We may directly solicit offers to purchase securities, or agents may be designated to solicit such offers. We will, in the prospectus supplement relating to such offering, name any agent that could be viewed as an underwriter under the Securities Act, and describe any commissions that we must pay. Any such agent will be acting on a best efforts basis for the period of its appointment or, if indicated in the applicable prospectus supplement, on a firm commitment basis. This prospectus may be used in connection with any offering of our securities through any of these methods or other methods described in the prospectus supplement.

The distribution of the securities may be effected from time to time in one or more transactions:

at a fixed price, or prices, which may be changed from time to time;

at market prices prevailing at the time of sale;

at prices related to such prevailing market prices; or

at negotiated prices.

Each prospectus supplement will describe the method of distribution of the securities and any applicable restrictions.

The prospectus supplement with respect to the securities of a particular series will describe the terms of the offering of the securities, including the following:

the name of the agent or any underwriters;

---

**Table of Contents**

the public offering or purchase price;

any discounts and commissions to be allowed or paid to the agent or underwriters;

all other items constituting underwriting compensation;

any discounts and commissions to be allowed or paid to dealers; and

any exchanges on which the securities will be listed.

If any underwriters or agents are utilized in the sale of the securities in respect of which this prospectus is delivered, we will enter into an underwriting agreement or other agreement with them at the time of sale to them, and we will set forth in the prospectus supplement relating to such offering the names of the underwriters or agents and the terms of the related agreement with them.

If a dealer is utilized in the sale of the securities in respect of which the prospectus is delivered, we will sell such securities to the dealer, as principal. The dealer may then resell such securities to the public at varying prices to be determined by such dealer at the time of resale.

If we offer securities in a subscription rights offering to our existing security holders, we may enter into a standby underwriting agreement with dealers, acting as standby underwriters. We may pay the standby underwriters a commitment fee for the securities they commit to purchase on a standby basis. If we do not enter into a standby underwriting arrangement, we may retain a dealer-manager to manage a subscription rights offering for us.

Agents, underwriters, dealers and other persons may be entitled under agreements which they may enter into with us to indemnification by us against certain civil liabilities, including liabilities under the

Securities Act, and may be customers of, engage in transactions with or perform services for us in the ordinary course of business.

If so indicated in the applicable prospectus supplement, we will authorize underwriters or other persons acting as our agents to solicit offers by certain institutions to purchase securities from us pursuant to delayed delivery contracts providing for payment and delivery on the date stated in the prospectus supplement. Each contract will be for an amount not less than, and the aggregate amount of securities sold pursuant to such contracts shall not be less nor more than, the respective amounts stated in the prospectus supplement. Institutions with whom the contracts, when authorized, may be made include commercial and savings banks, insurance companies, pension funds, investment companies, educational and charitable institutions and other institutions, but shall in all cases be subject to our approval. Delayed delivery contracts will not be subject to any conditions except that:

the purchase by an institution of the securities covered under that contract shall not at the time of delivery be prohibited under the laws of the jurisdiction to which that institution is subject; and

if the securities are also being sold to underwriters acting as principals for their own account, the underwriters shall have purchased such securities not sold for delayed delivery. The underwriters and other persons acting as our agents will not have any responsibility in respect of the validity or performance of delayed delivery contracts.

---

**Table of Contents**

Certain agents, underwriters and dealers and their associates and affiliates may be customers of, have borrowing relationships with, engage in other transactions with, and/or perform services, including investment banking services, for, us or one or more of our respective affiliates in the ordinary course of business.

In order to facilitate the offering of the securities, any underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the securities or any other securities the prices of which may be used to determine payments on such securities. Specifically, any underwriters may overallocate in connection with the offering, creating a short position for their own accounts. In addition, to cover overallocations or to stabilize the price of the securities or of any such other securities, the underwriters may bid for, and purchase, the securities or any such other securities in the open market. Finally, in any offering of the securities through a syndicate of underwriters, the underwriting syndicate may reclaim selling concessions allowed to an underwriter or a dealer for distributing the securities in the offering if the syndicate repurchases previously distributed securities in transactions to cover syndicate short positions, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of the securities above independent market levels. Any such underwriters are not required to engage in these activities and may end any of these activities at any time.

Under Rule 15c6-1 of the Exchange Act, trades in the secondary market generally are required to settle in three business days, unless the parties to any such trade expressly agree otherwise. Your prospectus supplement may provide that the original issue date for your securities may be more than three scheduled business days after the trade date for your securities. Accordingly, in such a case, if you wish to trade securities on any date prior to the third business day before the original issue date for your securities, you will be required, by virtue of the fact that your securities initially are expected to settle in more than three scheduled

business days after the trade date for your securities, to make alternative settlement arrangements to prevent a failed settlement.

The securities may be new issues of securities and may have no established trading market. The securities may or may not be listed on a national securities exchange. We can make no assurance as to the liquidity of or the existence of trading markets for any of the securities.

#### **LEGAL MATTERS**

Unless the applicable prospectus supplement indicates otherwise, the validity of the securities offered hereby will be passed upon for us by Wilmer Cutler Pickering Hale and Dorr LLP.

---

**Table of Contents**

**EXPERTS**

The financial statements and management's assessment of the effectiveness of internal control over financial reporting (which is included in Management's Report of Internal Control over Financial Reporting) incorporated in this Prospectus by reference to the Annual Report on Form 10-K for the fiscal year ended September 30, 2012 have been so incorporated in reliance on the report of PricewaterhouseCoopers LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

30

---

**Table of Contents**

**Brooks  
Automation, Inc.**

**Debt Securities**

**Common Stock**

**Preferred Stock**

**Depositary Shares**

**Purchase Contracts**

**Purchase Units**

**Warrants**

**PROSPECTUS**

, 2013



---

**Table of Contents**

**PART II**

**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution.**

The following table sets forth the costs and expenses payable by the Registrant in connection with the sale of the securities being registered hereby.

SEC registration fee	\$ 27,280	
Printing and engraving	\$	*
Accounting services	\$	*
Legal fees of registrant s counsel	\$	*
Miscellaneous	\$	*
Total	\$	*

\* Estimated expenses not presently known. The foregoing sets forth the general categories of fees and expenses (other than underwriting discounts and commissions) that we anticipate we will incur in connection with the offering of securities under this registration statement. An estimate of the aggregate fees and expenses in connection with the issuance and distribution of the securities being offered will be included in the applicable prospectus supplement.

**Item 15. Indemnification of Directors and Officers.**

Section 102 of the Delaware General Corporation Law (the "DGCL") provides that a corporation may eliminate the personal liability of directors of a corporation to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director, except where the director breached his duty of loyalty, failed to act in good faith, engaged in intentional misconduct or

knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit.

Section 145 of the DGCL provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided that such person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that the person's conduct was unlawful.

Section 145 further provides that a corporation may also indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact

II-1

---

**Table of Contents**

that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit provided that such person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the corporation's best interest, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought determines that, despite an adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 145(g) of the DGCL authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against such person and incurred by such person in any such capacity, arising out of such person's status as such, whether or not the corporation would otherwise have the power to indemnify such person under Section 145.

The Registrant's restated certificate of incorporation provides that no director of the Registrant shall be personally liable for any monetary damages for any breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Registrant or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. The Registrant's restated

certificate of incorporation further provides for the indemnification of its directors and officers to the fullest extent permitted by Section 145 of the DGCL.

The Registrant's amended and restated bylaws provide that the Registrant may indemnify, and may advance expenses, to each covered person who is a party to, or was or is threatened to be made a party to, or is otherwise involved in any proceeding, as provided in the Registrant's amended and restated bylaws and to the fullest extent permitted by applicable law.

All of the Registrant's directors and officers are covered by insurance policies maintained by the Registrant against specified liabilities for actions taken in their capacities as such, including liabilities under the Securities Act of 1933, as amended. In addition, the Registrant has entered into or offered to enter into indemnification agreements with each of its directors and executive officers that provide for indemnification and expense advancement to the fullest extent permitted under the DGCL.

---

**Table of Contents**

**Item 16. Exhibits.**

<b>Exhibit No.</b>	<b>Description</b>
1*	Form of Underwriting Agreement
3.1	Restated Certificate of Incorporation
3.2	Amended and Restated Bylaws (Incorporated by reference to Exhibit 3.01 to the Registrant's Current Report on Form 8-K filed on February 11, 2008)
4.1	Form of Senior Indenture (Incorporated by reference to Exhibit 4.1 to the Registrant's Registration Statement on Form S-3 filed on June 21, 2010) (File No. 333-167657) (the "S-3").
4.2	Form of Senior Note (Incorporated by reference to Exhibit 4.2 to the S-3)
4.3	Form of Subordinated Indenture (Incorporated by reference to Exhibit 4.3 to the S-3)
4.4	Form of Subordinated Note (Incorporated by reference to Exhibit 4.4 to the S-3)
4.5*	Certificate of Designation of Preferred Stock
4.6*	Form of Warrant Agreement
4.7*	Form of Purchase Agreement
4.8*	Form of Unit Agreement
5	Opinion of Wilmer Cutler Pickering Hale and Dorr LLP
12	Calculation of Ratios of Earnings to Fixed Charges
23.1	Consent of PricewaterhouseCoopers LLP
23.2	Consent of Wilmer Cutler Pickering Hale and Dorr LLP (included in Exhibit 5)
24	Powers of Attorney (included in the signature pages to the Registration Statement)
25.1**	

Statement of Eligibility of  
Trustee on Form T-1 of Trustee  
under the Senior Indenture

25.2\*\* Statement of Eligibility of  
Trustee on Form T-1 of Trustee  
under the Subordinated Indenture

Previously filed.

\* To be filed by amendment or by a  
Current Report on Form 8-K prior to the  
issuance of the applicable securities.

\*\* To be filed pursuant to  
Section 305(b)(2) of the Trust  
Indenture Act of 1939.

**Item 17. Undertakings.**

The undersigned registrant hereby  
undertakes:

(1) To file, during any period in which  
offers or sales are being made, a  
post-effective amendment to this  
registration statement:

(i) to include any prospectus required by  
Section 10(a)(3) of the Securities Act  
of 1933, as amended (the Securities  
Act of 1933 );

(ii) to reflect in the prospectus any facts  
or events arising after the effective  
date of the registration statement (or  
the most recent post-effective  
amendment thereof) which,  
individually or in the aggregate,  
represent a fundamental change in  
the information set forth in the  
registration statement.  
Notwithstanding the foregoing,

II-3

---

**Table of Contents**

any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(iii) to include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

*Provided, however, that:*

paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) of this section do not apply if the registration statement is on Form S-3 or Form F-3 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) (§230.424(b) of this chapter) that is part of the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at the time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

(A) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided,



---

**Table of Contents**

however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(5) That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities:

The undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or

its securities provided by or on behalf of the undersigned registrant; and

(iv) any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(6) To file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Trust Indenture Act.

(7) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(8) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

---

**Table of Contents**

(9) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(10) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the indemnification provisions described herein, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

---

**Table of Contents**

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this Amendment No.1 to Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Chelmsford, Commonwealth of Massachusetts, on July 24, 2013.

**BROOKS  
AUTOMATION,  
INC.**

By: /s/ Martin S.  
Headley  
Name: Martin S.  
Headley  
Title: Executive  
Vice  
President  
and Chief  
Financial  
Officer

Pursuant to the requirements of the Securities Act of 1933, as amended, this Amendment No.1 to Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
By: *	Director,	July
	President and	24,
<b>Stephen S. Schwartz</b>	Chief Executive Officer (Principal Executive Officer)	2013
By: /s/ Martin S. Headley	Executive Vice President and Chief	July 24, 2013
<b>Martin S. Headley</b>	Financial Officer (Principal Financial Officer)	

By: \*

Edgar Filing: SPROTT FOCUS TRUST INC. - Form N-CSR

**David F. Pietrantoni** Vice President, Finance, and Corporate Controller (Principal Accounting Officer) July 24, 2013

By: \* Director July 24, 2013  
**A. Clinton Allen**

By: /s/ Robyn C. Davis Director July 24, 2013  
**Robyn C. Davis**

By: \* Director July 24, 2013  
**Joseph R. Martin**

II-7

---

**Table of Contents**

By: \* Director July  
24,  
2013  
**John K.  
McGillicuddy**

By: \* Director July  
24,  
2013  
**Krishna G.  
Palepu**

By: \* Director July  
24,  
2013  
**Kirk P. Pond**

By: \* Director July  
24,  
2013  
**Alfred  
Woollacott III**

By: \* Director July  
24,  
2013  
**Mark S.  
Wrighton**

By: \* Director July  
24,  
2013  
**Ellen M. Zane**

\*By: /s/ Martin S.  
Headley  
**Martin S.  
Headley,  
Attorney-in-Fact**

---

**Table of Contents**

**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>
1*	Form of Underwriting Agreement
3.1	Restated Certificate of Incorporation
3.2	Amended and Restated Bylaws (Incorporated by reference to Exhibit 3.01 to the Registrant's Current Report on Form 8-K filed on February 11, 2008)
4.1	Form of Senior Indenture (Incorporated by reference to Exhibit 4.1 to the Registrant's Form S-3 (File No. 333-167657) (the S-3))
4.2	Form of Senior Note (Incorporated by reference to Exhibit 4.2 to the S-3)
4.3	Form of Subordinated Indenture (Incorporated by reference to Exhibit 4.3 to the S-3)
4.4	Form of Subordinated Note (Incorporated by reference to Exhibit 4.4 to the S-3)
4.5*	Certificate of Designation of Preferred Stock
4.6*	Form of Warrant Agreement
4.7*	Form of Purchase Agreement
4.8*	Form of Unit Agreement
5	Opinion of Wilmer Cutler Pickering Hale and Dorr LLP
12	Calculation of Ratios of Earnings to Fixed Charges
23.1	Consent of PricewaterhouseCoopers LLP
23.2	Consent of Wilmer Cutler Pickering Hale and Dorr LLP (included in Exhibit 5)
24	Powers of Attorney (included in the signature pages to the Registration Statement)
25.1**	Statement of Eligibility of Trustee on Form T-1 of Trustee

under Senior Indenture

25.2\*\* Statement of Eligibility of  
Trustee on Form T-1 of Trustee  
under Subordinated Indenture

Previously filed.

\* To be filed by amendment or by a  
Current Report on Form 8-K prior to the  
issuance of the applicable securities.

\*\* To be filed pursuant to  
Section 305(b)(2) of the Trust  
Indenture Act of 1939.

II-9